SUBJECT: Information Report: City of Hamilton Committee of Adjustment (Urban) Denial of Consent/Land Severance Application HM/B-05:103 (Duc Le & Annie Lan-Anh Le, Owners), 88 Forsyth Avenue North - Supported by the Planning and Economic Development Department (PED05176) (Hamilton) (Ward 1)

RECOMMENDATION:

That Report PED05176 respecting the City of Hamilton Committee of Adjustment (Urban) Consent/Land Severance Application HM/B-05:103 (Duc Le & Annie Lan-Anh Le, Owners), 88 Forsyth Avenue North, former City of Hamilton, as shown on Appendix “A” to Report PED05176, denied by the Committee of Adjustment but supported by the Planning and Economic Development Department, be received for information.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

Consent/Land Severance Application HM/B-05:103 for the property at 88 Forsyth Avenue North was originally considered before the City of Hamilton Committee of Adjustment (Urban) on June 15, 2005, and was tabled in order for the proposed Ainslie Wood/Westdale Secondary Plan to be considered by Council. The Secondary Plan was
approved by Council on July 13, 2005; and on July 20, 2005, the application was again tabled by the Committee pending the expiration of the appeal period for the Secondary Plan in order to confirm the Plan’s status.

Comments from staff to the Committee of Adjustment after the Plan came into force supported the proposed severance, subject to conditions. The proposal, in staff’s view, is consistent with the Provincial Policy Statement, conforms to the Hamilton-Wentworth Official Plan and to the policies of the Ainslie Wood/Westdale Secondary Plan of the Hamilton Official Plan, and complies with the provisions of the Zoning By-law. On August 24, 2005, the Committee of Adjustment denied the application (see Appendix “B”). The Committee’s decision has been appealed to the Ontario Municipal Board by one of the owners, Duc Le.

**BACKGROUND:**

**Roles and Responsibilities of the Committee of Adjustment (PD02116(a))**

In December 2002, City Council endorsed a staff report related to the roles and responsibilities of the Committee of Adjustment. The recommendations included the following:

“That the Planning and Development Department be authorized and directed to prepare an Information Report to the Committee of the Whole whenever an appeal is made to the Ontario Municipal Board, of a decision made by the Committee of Adjustment to deny an application(s) that was supported by staff. In response to such a report, Council may determine its position on the Committee of Adjustment decision and may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

**Proposal**

On June 15, 2005, the Committee of Adjustment (Urban) considered consent/land severance application HM/B-05:103 for the property at 88 Forsyth Avenue North, as shown on Appendix “A”. The application was to permit the conveyance of a vacant parcel of land measuring 18.3 metres wide by 35.6 metres in depth for a new single family dwelling, and to retain a parcel of land measuring 24.4 metres wide by 35.6 metres in depth containing an existing two storey single family dwelling. The proposal was supported by a Planning Justification Study, prepared by the owner’s planning consultant. The application was tabled in order for the Ainslie Wood/Westdale Secondary Plan, which identified this area as one of large lots, to be considered by the Planning and Economic Development Committee and Council.
The new Secondary Plan was approved by Council on July 13, 2005. On July 20 2005, the application was again tabled by the Committee of Adjustment pending the expiration of the appeal period for the Secondary Plan in order to confirm the Plan’s status prior to a decision being made on the application.

Subsequent to the appeal period for the new secondary plan expiring and the plan coming into force, staff provided comments to the Committee for its August 24, 2005 meeting, which supported the application subject to the following condition:

“1. That the applicant enter into a Consent Agreement which requires the owner to agree to the following requirements for the proposed severed lands, to the satisfaction of the Manager, Development Planning, in consultation with the Manager, Community Planning and Design:

(a) Submission of detailed plans and elevations, noting materials and colours.

(b) The plans will show that the garage should not form part of the front facade, and is to be set back as far as possible from the front façade.

(c) The owner shall choose one architectural style that is consistent with the neighbourhood, and is to avoid the mixing of architectural features of different styles.

(d) The following exterior materials must be avoided on the front facade:

  Synthetic materials, including vinyl siding; synthetic stucco, and synthetic stone.”

The Committee of Adjustment denied the application (Appendix “B”) for the following reasons:

“1. The proposal does not appear to be in the interest of proper planning and development for the area.

2. The Committee feels the proposal does not compliment the established development pattern of the neighbourhood relating to the setbacks and coverage for the existing dwelling on the retained parcel.

3. The proposal does not comply with Section 51(24) of The Planning Act.”

The application was appealed to the Ontario Municipal Board by one of the owners, Duc Le, on September 15, 2005, hearing pending.
ANALYSIS/RATIONALE:

1. The proposal is consistent with the Provincial Policy Statement, subject to the recommended conditions which address the intent of the PPS with respect to the protection of the cultural heritage landscape. The proposal also conforms to the Hamilton-Wentworth Official Plan and to the Ainslie Wood/Westdale Secondary Plan of the Hamilton Official Plan, and complies with the current provisions of the Zoning By-law, including the provisions for minimum lot width and minimum lot area.

2. The applicant's agent submitted a Planning Justification Study, which provided an inventory of the widths and areas of the existing lots within the area identified as "Large Lots" by the new Ainslie Wood/Westdale Secondary Plan where the subject lands are located. The findings indicate:

   - Lots within this area currently range in width from 12.1 to 70.1 metres, compared to 18.3 metres for the proposed severed lot and 24.4 metres for the proposed retained lot.

   - Lots within this area currently range in lot area from 364.23 to 6,394.26 square metres, compared with 651.48 square metres for the proposed severed lot and 868.64 square metres for the proposed retained lot.

   - 23% of the existing lots in the area are smaller than or equal to the lots proposed.

   - The current gross density of this area is 6.2 units per hectare and with the additional lot/unit the density would increase to 6.3 units per hectare, which is well below the range of gross density generally applicable to the "Low Density Residential" designation, being 10 to 29 units per hectare.

3. The proposal satisfies all the criteria for a severance within Section 51(24) of the Planning Act, including matters related to the health, safety, convenience and welfare of the present and future inhabitants, conformity with the Official Plans, suitability of the lands to be severed for a single family dwelling, compliance with the restrictions in the zoning, and the adequacy of utilities and municipal services.
SUBJECT: Information Report; City of Hamilton Committee of Adjustment (Urban) Denial of Consent/Land Severance Application HM/B-05:103 (Duc Le & Annie Lan-Anh Le, Owners), 88 Forsyth Avenue North - Supported by the Planning and Economic Development Department (PED05176) (Hamilton) (Ward 1) - Page 5 of 7

ALTERNATIVES FOR CONSIDERATION:

Option 1

Council may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee of Adjustment decision, and to retain outside professional(s).

Option 2

Council may decide to support the applicant’s appeal against the Committee of Adjustment’s decision to refuse, and direct Legal Services to attend the Ontario Municipal Board Hearing in support of the application and to use City Planning staff as its professional witness.

Option 3

Council may decide to not send Legal Services to the Ontario Municipal Board, either in support of the Committee’s decision or against the decision.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: Planning and Economic Development Department staff supported the subject application. If Council wishes to support the Committee denial, the City must seek out an outside planning consultant who can professionally support the denial. If retained, the cost of hiring the planner for the Hearing is estimated at $2,500 to $5,000. In addition, one lawyer from Legal Services would be required for preparation and attendance at the Hearing. These costs are covered by the respective Departmental Work Programs/Budgets. Therefore, no additional funds would be required.

Staffing: One representative from Legal Services would be required for preparation and attendance at the Ontario Municipal Board Hearing.

Legal: No legal implications are expected.

POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement

Policy 1.1.3.3 requires that “Planning authorities shall identify and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the
availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.” The proposal is consistent with this policy.

In order to satisfy the intent of the PPS with respect to the “protection” of the cultural heritage landscape, this can only be achieved through the subsequent review and approval of the form of the residence to be built. As plans and drawings were not submitted with the application, approval of the application must be conditional on the approval of additional plans and drawings prior to the issuance of a building permit.

The application, upon satisfaction of the above-noted condition, would be consistent with the principles and parameters of the PPS.

**Hamilton-Wentworth Official Plan**

The subject property is designated “Urban Area” in the Hamilton-Wentworth Official Plan. Policy 3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. As well, the Urban Areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020.

Therefore, as the nature of the application is to create an additional lot for a single family dwelling where full municipal services are available, the application conforms to the Hamilton-Wentworth Official Plan.

**Hamilton Official Plan (Ainslie Wood/Westdale Secondary Plan)**

The Ainslie Wood/Westdale Secondary Plan of the Hamilton Official Plan designates these lands “Low Density Residential”. Within this designation, Policy 6.4.1.2 (i) permits single detached dwellings, semi-detached dwellings, duplexes and street townhouses, although single detached dwellings are to be the primary form of housing in most of these areas, especially in the interior neighbourhoods. Policy 6.4.1.2 (ii) permits densities within this designation generally between 10 to 29 units per gross hectare; however, the area identified as “Large Lots”, which comprises the subject lands, will have a lower density.

The subject lands are part of the “Large Lot” area identified by Policy 6.4.1.2(iv) (a), being bounded by Mayfair Crescent, Sterling Street, Dalewood Crescent, and Oak Knoll Drive, also Mayfair Place and Oakwood Place. Any future housing created through redevelopment in this area must retain this Large Lot density, to help preserve the area’s character.

The proposal would permit a use and a density of development in conformity with the policies of the secondary plan.
Hamilton Zoning By-law No. 6593

The subject lands are zoned “C/S-1361” (Urban Protected Residential, etc.) District, Modified, which permits one single family dwelling on a lot with a minimum lot width of 12 metres and a minimum lot area of 360 square metres. The modification “S-1361” applies the “Monster Housing” provisions of By-law 96-109 to the site.

The requested consent complies with the provisions of the By-law. The proposed severed lot has a lot width of 18.3 metres and an area of 651.48 square metres, and the proposed retained lot has a width of 24.4 metres and an area of 868.64 square metres. The existing dwelling on the proposed retained lot meets all of the requirements of the By-law.

RELEVANT CONSULTATION:

- Legal Services Division.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
The public are involved in the definition and development of local solutions.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Human health and safety are protected.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No

:RW

Attaches. (2)
COMMITTEE OF ADJUSTMENT

NOTICE OF DECISION

APPLICATION FOR CONSENT LAND SEVERANCE

APPLICATION NO. HMB-05-103
SUBMISSION NO. B-103/05

IN THE MATTER OF The Planning Act, R.S.O. 1990, Chapter P13, Section 53(1);

AND IN THE MATTER OF the Premises known as Municipal number 88 Forsyth Avenue North, in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent Fred Rudolph and/or Jay Brohman on behalf of the owners Duc Le and Annie Lien-Ainh Le, for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of a vacant parcel of land measuring 18.3m² (60.03' x 31.66') measuring 35.6m² (116.79' x 32.44') containing an existing two storey single family dwelling for residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reasons:

1. The proposal does not appear to be in the interest of proper planning and development for the area.

2. The Committee feels the proposal does not compliment the established development pattern of the neighbourhood relating to the setbacks and coverage for the existing dwelling on the retained parcel.

3. The proposal does not comply with Section 51(24) of The Planning Act.

DATED AT HAMILTON this 24th day of August, 2005.

D. Drury, Acting Chairman

V. Abraham

C. Lewis

D. DeLillo

R. Nairn

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS August 31st, 2005.

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS September 20th, 2005.

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.